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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2589 of 1998

with

SPECIAL CIVIL APPLICATION No 4673 of 1998

with

SCA No.4674 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No.

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2. To be referred to the Reporter or not? No.

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

AJITBHAI RAMJIBHAI THAKKER

Versus

G S R T CORPORATION

Appearance:

1. Special Civil Application No. 2589 of 1998

MR HK RATHOD for Petitioner

MR YS LAKHANI for Respondent No. 1

2. Special Civil Application No 4673 of 1998
MR YS LAKHANI for Petitioner

SCA No.4674 of 1998

G S R T CORPORATION

Versus

AJIT R THAKKER

Appearance:

MR YS LAKHANI for Petitioner

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 09/07/98

ORAL JUDGEMENT

Rule. Mr. Lakhani waives service of notice of Rule on behalf of the respondent in SCA No.2589 of 1998. Mr. H.K.Rathod learned advocate for the respondent waives service of notice of Rule in SCA No.4673 of 1998.

2. SCA Nos.2589 of 1998 and 4673 of 1998 are filed against one and the same award passed by the Labour Court, Buch in Reference No. 628 of 1996 on 18.11.97. SCA No.2589 of 1998 is filed by the workman seeking the implementation of the award; whereas SCA No.4673 of 1998 is filed by the employer seeking the quashing of the award. As all these SCAs are against one and the same award, they are heard and are being disposed of by this common judgment.

3. The petitioner in SCA No.2589 of 1998 was working as a conductor with the respondent Gujarat State Road Transport Corporation(GSRTC). It seems that the corporation had taken action against the present petitioner earlier and he was dismissed from service. Therefore, the workman raised an industrial dispute, which resulted into Reference No. 950 of 1989. Said reference was decided in favour of the employee by passing an award reinstating him with continuity of service with full back wages. Said award was challenged by the GSRTC by preferring SCA No. 8760 of 1992 which

was rejected summarily. Thereafter the employee was reinstated in service . But it seems that immediately thereafter a show cause notice was issued to the employee to show cause why he should not be dismissed from service as he had altered the figures in the way bill and misappropriated the amount of Rs. 160/-. The show cause notice had directed the employee to show cause within three days. The employee gave an application seeking extension of time but the departmental inquiry was proceeded against him ex parte. Therefore, an order, dismissing him from service was passed on 29.6.93. He therefore, raised an industrial dispute which resulted into Original Reference No. 186 of 1994 which is subsequently numbered as Reference No. 628 of 1996. The employee had raised a contention that he had not carried out alteration in the way bill and he had not committed any misappropriation of any amount of Rs. 160/- as claimed by the GSRTC. The Labour Court found that the departmental inquiry held by the GSRTC was illegal and invalid. The application which was given by the workman seeking time to file his reply to the show cause notice was treated as reply to the show cause notice and the inquiry was based on the same. Therefore, said inquiry was quashed and set aside and the GSRTC was given opportunity to lead evidence before the Labour Court to support its charge against the delinquent. Accordingly the GSRTC had examined certain witnesses but the Labour Court found that these witnesses were examined before him in the year 1994 and the way bill was of the year 1984 and except the oral evidence, the GSRTC had not produced any documentary evidence to corroborate and support the oral testimony. The Labour Court found that the main charge against the delinquent was alteration in the figures of the way bill but the original way bill was not produced before the Labour Court. Not only that it was not produced before the Labour Court, it was also not produce before the inquiry officer also when he had passed the said order of dismissal. Therefore, in the absence of any document to support the oral testimony, the Labour Court did not accept the testimony of the witness and came to the conclusion that the GSRTC had failed to prove the charge against the employee. Said finding is recorded by the Labour Court on appreciation of oral evidence. In cases of charge of misappropriation the same has to be proved mostly by producing documentary evidence. Oral testimony of a witness can be used as a help for appreciating documentary evidence on record. In order to prove the charge against the conductor, it was necessary for the corporation to produce important documentary evidence i.e. the way bill which was said to have been altered or fabricated by the delinquent. When

the corporation had not produced said document itself, it was not possible to hold there was alteration or fabrication of the said document-the way bill. Similarly it was necessary for the corporation to produce the cash book and the date on which the way bill was presented because the cash book would have shown what amount was credited by the conductor with the corporation on that particular date towards the said way bill. Even that cash book was not produced before the Labour Court. Therefor, in the circumstances appreciation of evidence by the Labour Court in rejecting the testimony in the absence of documentary evidenced could not be said to a perverse appreciation or grossly erroneous appreciation of evidence so as to interfere with the same by exercising the powers under Article 226 and 227 of the Constitution of India. Therefore, from the material on record, it is not possible to hold that the Labour Court has committed any error of law in holding that the corporation had failed to prove the charge against the delinquent. Therefore, once it is found that the corporation has failed to prove its charge against the delinquent, then the natural consequence would follows viz. of ordering reinstatement of the workman with back wages. The learned advocate for the Corporation urged before that the corporation is a public body and on account of the order in question the corporation has to pay lacs of rupees to the delinquent. But merely because the corporation is a public body, the legitimate right of the workman could not be denied. It seems that the allegation made against the corporation is out of some vengeance. The allegation against him is about presentation of the way bill of the year 1984 in the year 1994. Therefore,ten years after the presentation of the way bill. It is not also the case of the corporation that said defect was detected in audit. The unnecessary haste shown in the departmental inquiry also supports my inference that the workman seems to have been wrongly involved in these proceedings. Therefore, in the circumstances, if some officer is the cause for this illegal action against the workman, then the corporation should take action against him but it is not possible for this court to deny the workman, who has been wrongly terminated or dismissed from services, his legitimate dues.

5. Learned advocate for the corporation urged before me that it is not possible to hold that the workman must not be without any employment. The workman has made a statement that he was not in any job or gainful employment and when there is no evidence to hold to the contrary, then it is not be possible to hold that the

Labour Court had committed any error in accepting that claim of the workman. Therefore, in view of the above considerations I hold that sca No.4673 of 1998 deserves to be rejected . Similarly SCA NBo. 2589 of 1998 is filed by the oworkman for implementation of the award. When the award has been confirmed by me today in SCA No. 4673 of 1998, then naturally this SCA deserves to be allowed. Thus SCA No.4673 of 1998 is rejected and Rule is discharged. SCA No. 2589 of 1998 is allowed and Rule is made absolute. The parties to bear their respective costs in each of these SCAS.

The GSRTC is directed to reinstate the workman within six weeks from the date of receipt of the writ of this court and to pay him all the arrears as per the award within 8 weeks thereafter.

SCA No. 4674 of 1998.

This SCA is filed by the GSRTC to challenge the recovery order passed by the Recovery Officer. When the GSRTC has admitted to implement the award passed in favour of the workman in Ref.. 135 of 1992, this petition would not survive. The main grievance made before me by the learned advocate for the GSRTC is that the Recovery Officer has directed the GSRTC to pay 18 percent interest on the amount of Rs. 1,70,923.10 p. and per clause 21 of the order of January 1998, according to the learned advocate for the petitioner, the Recovery Officer was not justified in awarding said interest. The recovery application is filed by the workman for the recovery of the amount as per the award passed in Ref. No.135 of 1992 on 13.4.97 itself shows that the Labour Court had directed the GSRTC to reinstate him and to pay him back wages within 60 days from the date of the award and it had further directed that in case if the GSRTC failed to reinstate him and to pay him back wages within ten days, then 18 percent interest would be paid. Thus said award/order passed by the Labour Court was challenged by filing SCA No. 8760 of 1992. Said SCA was summarily rejected on 29.1.1993. Consequently the award has become conclusive and final. When the award itself had directed the GSRTC to pay the arrears with 18 percent interest and if the Recovery Officer had passed an order to pay 18 percent interest on the said amount, then it could not be said that there was any illegality in the same. I therefore, reject this application. Rule discharged. No order as to costs.

(S.D.Pandit.J)